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VK/PL:AGR
2013R00069

July 28, 2017

Daniel J. Welsh, Esq.
549 Summit Ave.
Jersey City, N.J. 07306

Re: Plea Agreement with JUAN R. BERRIOS

Dear Mr. Welsh:

This letter sets forth the plea agreement between your client, JUAN R. BERRIOS, and the United States Attorney for the District of New Jersey ("this Office"). Should your client wish to accept this agreement, the executed original must be received by this Office no later than close of business on August 4, 2017. If an executed agreement is not returned to this Office by that date, this offer will expire.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from JUAN R. BERRIOS to a one-count Information, which charges him with conspiracy to embezzle, steal, obtain by fraud, misapply, and without authority knowingly convert to the use of other persons other than the rightful owner \$5,000 and more owned by and under the care, custody and control of the City of Jersey City, and to corruptly accept and agree to accept bribe payments, intending to be influenced and rewarded in connection with the business, transaction, or series of transactions of the City of Jersey City, contrary to Title 18, United States Code, Sections 666(a)(1)(A) and (B), in violation of Title 18, United States Code, Section 371. If JUAN R. BERRIOS enters a guilty plea and is sentenced on this count, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against JUAN R. BERRIOS for agreeing to accept and accepting bribe payments from contractors in connection with off-duty work for Jersey City police officers, and diverting from Jersey City government money relating to off-duty and overtime assignments from in or about 2008 to in or about 2016. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea

does not remain in full force and effect, JUAN R. BERRIOS agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by JUAN R. BERRIOS may be commenced against him, notwithstanding the expiration of the limitations period after JUAN R. BERRIOS signs the agreement.

Sentencing

The violation of 18 U.S.C. § 371 to which JUAN R. BERRIOS agrees to plead guilty carries a statutory maximum prison sentence of 5 years, and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon JUAN R. BERRIOS is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence JUAN R. BERRIOS ultimately will receive.

Further, in addition to imposing any other penalty on JUAN R. BERRIOS, the sentencing judge: (1) will order JUAN R. BERRIOS to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order JUAN R. BERRIOS to pay restitution to all victims of the offense, including Jersey City, pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order JUAN R. BERRIOS, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; and (5) pursuant to 18 U.S.C. § 3583, the Court may require JUAN R. BERRIOS to serve a term of supervised release of not more than 3 years, which will begin at the expiration of any term of imprisonment imposed. Should JUAN R. BERRIOS be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, JUAN R. BERRIOS may be sentenced to not more than 2 years' imprisonment, in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, JUAN R. BERRIOS agrees to make full restitution for all losses resulting from the offenses of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying those offenses, in the amount of \$34,951.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on JUAN R. BERRIOS by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of JUAN R. BERRIOS's activities and relevant conduct with respect to this case.

Stipulations

This Office and JUAN R. BERRIOS agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or JUAN R. BERRIOS from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and JUAN R. BERRIOS waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

JUAN R. BERRIOS agrees that as part of his acceptance of responsibility and pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, he will consent to the entry of a forfeiture money judgment in the amount of \$50,000 (the "Forfeiture Money Judgment"),

representing the property constituting or derived, directly and indirectly, from proceeds traceable to the commission of the offense, contrary to 18 U.S.C. § 666 and in violation of 18 U.S.C. § 371, charged in the Information (an offense constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7)). JUAN R. BERRIOS further agrees to forfeit to the United States all of his right, title and interest in the following specific property, which JUAN R. BERRIOS admits has the requisite nexus to the charged offense and is therefore forfeitable to the United States of America pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) (the "Specific Property"): the contents of J.P. Morgan Chase Account number [REDACTED] 4010, held in the name of Olga C. Melendez, which was seized on or about August 5, 2015. The Specific Property will be applied to the Forfeiture Money Judgment in satisfaction thereof.

JUAN R. BERRIOS understands and agrees that the government intends to seek forfeiture of substitute assets pursuant to 21 U.S.C. § 853(p) (incorporated by 28 U.S.C. § 2461(c)) as to any unpaid portion of the Forfeiture Money Judgment and any Specific Property if the criteria set forth in 21 U.S.C. § 853(p) are met.

JUAN R. BERRIOS further consents to the administrative and/or civil judicial forfeiture of the Specific Property pursuant to 18 U.S.C. § 981(a)(1)(C). JUAN R. BERRIOS agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. To the extent JUAN R. BERRIOS has filed a claim or petition in any administrative or civil judicial forfeiture proceeding involving the Specific Property, such claims or petitions are hereby deemed withdrawn. JUAN R. BERRIOS further agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the surrender of such property to the Government and the execution of necessary documentation.

JUAN R. BERRIOS agrees to consent to the entry of orders of forfeiture for the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. JUAN R. BERRIOS understands that the forfeiture of the Forfeiture Money Judgment is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

JUAN R. BERRIOS hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

JUAN R. BERRIOS represents that he will disclose all of his assets to the United States on a Financial Disclosure Statement. JUAN R. BERRIOS agrees that if this Office determines that he has intentionally failed to disclose assets on that Financial Disclosure Statement, that failure constitutes a material breach of this agreement. In addition, JUAN R. BERRIOS consents to the administrative, civil, and/or criminal forfeiture of his interests in any

assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that JUAN R. BERRIOS owns or in which JUAN R. BERRIOS has an interest be discovered, JUAN R. BERRIOS knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. JUAN R. BERRIOS further agrees to execute any documents necessary to effectuate the forfeiture of said assets. JUAN R. BERRIOS further understands that any forfeiture of his assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

Immigration Consequences

JUAN R. BERRIOS understands that, if he is not a citizen of the United States, his guilty plea to the charged offense will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. JUAN R. BERRIOS understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. JUAN R. BERRIOS wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. JUAN R. BERRIOS understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, JUAN R. BERRIOS waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against JUAN R. BERRIOS. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service) or any third party from initiating or prosecuting any civil or administrative proceeding against JUAN R. BERRIOS.

No provision of this agreement shall preclude JUAN R. BERRIOS from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that JUAN R. BERRIOS received constitutionally ineffective assistance of counsel.

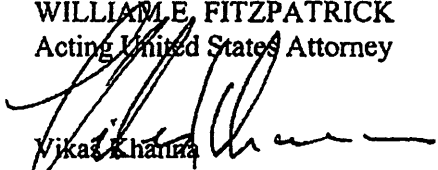
No Other Promises

This agreement constitutes the plea agreement between JUAN R. BERRIOS and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

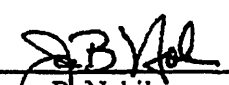
Very truly yours,

WILLIAM E. FITZPATRICK
Acting United States Attorney

By:


Vikas Khanna
Assistant U.S. Attorney

APPROVED:


James B. Nobile
Chief, Special Prosecutions Division

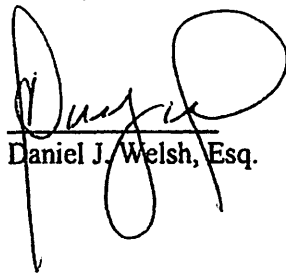
I have received this letter from my attorney, Daniel J. Welsh, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, restitution, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:


Juan R. Berrios

Date: 8/1/17

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, restitution, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.


Daniel J. Welsh, Esq.

Date: 8/1/17

Plea Agreement With JUAN R. BERRIOS

Schedule A

1. This Office and JUAN R. BERRIOS recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and JUAN R. BERRIOS nevertheless agree to the stipulations set forth herein.
2. The version of the United States Guidelines effective November 1, 2016 applies in this case.
3. Pursuant to U.S.S.G. § 1B1.2(d), a conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit.

Fraud Conspiracy

4. The applicable guideline is U.S.S.G. § 2X1.1(a), which requires application of the base offense level from the guideline for the substantive offense and any sentencing adjustments for that guideline.
5. The substantive offense is a violation of 18 U.S.C. § 666(a)(1)(A), and the applicable guideline for that offense is U.S.S.G. § 2B1.1. This guideline carries a Base Offense Level of 6. See U.S.S.G. § 2B1.1(a)(2).
6. Specific Offense Characteristic U.S.S.G. § 2B1.1(b)(1)(C) applies because the loss caused by the fraudulent activity exceeded \$6,500; specifically, the loss was greater than \$15,000 but less than or equal to \$40,000. This results in an increase of 4 levels.
7. Specific Offense Characteristic U.S.S.G. § 3B1.3 applies because JUAN R. BERRIOS abused a position of public trust in a manner that significantly facilitated the commission and concealment of the offense. This results in an increase of 2 levels.
8. The total offense level for the fraud conspiracy ("Group 1") is 12.

Bribery Conspiracy

9. The applicable guideline is U.S.S.G. § 2X1.1(a), which requires application of the base offense level from the guideline for the substantive offense and any sentencing adjustments for that guideline.
10. The substantive offense is a violation of 18 U.S.C. § 666(a)(1)(B), and the applicable guideline for that offense is U.S.S.G. § 2C1.1. This guideline carries a Base Offense Level of 14. See U.S.S.G. § 2C1.1(a)(1).

11. Specific Offense Characteristic U.S.S.G. § 2C1.1(b)(1) applies because the offense involved more than one bribe. This results in an increase of 2 levels.

12. Specific Offense Characteristic U.S.S.G. § 2C1.1(b)(2) applies because the value of the payments in this case exceeded \$6,500; specifically, the value of the payments was greater than \$40,000 but less than or equal to \$95,000. This results in an increase of 6 levels. See U.S.S.G. § 2B1.1(b)(1)(D).

13. Specific Offense Characteristic U.S.S.G. § 2C1.1(b)(3) applies because the offense involved a public official in a sensitive position. This results in an increase of 4 levels.

14. The total offense level for the bribery conspiracy ("Group 2") is 26.

Grouping Analysis

15. Because Group 1 is 14 levels less serious than Group 2, it does not increase the applicable offense level. U.S.S.G. § 3D1.4(c). Therefore, the total offense level for both groups is 26.

16. As of the date of this letter, JUAN R. BERRIOS has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if JUAN R. BERRIOS's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

17. As of the date of this letter, JUAN R. BERRIOS has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting this Office to avoid preparing for trial and permitting this Office and the court to allocate their resources efficiently. At sentencing, this Office will move for a further 1-point reduction in JUAN R. BERRIOS's offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) JUAN R. BERRIOS enters a plea pursuant to this agreement, (b) this Office in its discretion determines that JUAN R. BERRIOS's acceptance of responsibility has continued through the date of sentencing and JUAN R. BERRIOS therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) JUAN R. BERRIOS's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

18. In accordance with the above, the parties agree that the total Guidelines offense level applicable to JUAN R. BERRIOS is 23 (the "agreed total Guidelines offense level").

19. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein.

20. JUAN R. BERRIOS knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 23. This Office will not file any appeal, motion, or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 23. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

21. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.